

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 13-O-11665-YDR
)	
ANITA D. ROSIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 198496,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Anita D. Rosin (respondent) was charged with 10 counts of violations of the Rules of Professional Conduct and the Business and Professions Code¹ involving the representation of three clients in a personal injury claim matter. Respondent failed to appear at the trial of this case and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 1, 1998, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On December 11, 2013, the State Bar filed and properly served upon respondent's counsel, Arthur L. Margolis, by certified mail, return receipt requested, a Notice of Disciplinary Charges (NDC) in case No. 13-O-11665. Respondent, by and through her counsel, filed a response to the NDC on January 30, 2014.

Respondent's counsel participated in a status conference on January 24, 2014. On January 29, 2014, the court issued an "Order re: Trial Date, Pretrial Conference, Trial Preparation Requirements, Settlement." Among other things, the court ordered that the trial commence in this proceeding on April 22, 2014, at 9:30 a.m. The order was properly served on respondent's counsel, attorney Margolis, by first class mail with postage prepaid. (Rule 5.81(A)(2)(a).)

On April 1, 2014, attorney Margolis filed "Respondent's Request to Be Permitted to Withdraw Her Response to the Notice of Disciplinary Charges." On April 7, 2014, the State Bar

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

filed an opposition thereto. On April 9, 2014, the court filed and served the parties with an order denying respondent's request to withdraw her response to the NDC.

Thereafter, on April 17, 2014, attorney Margolis filed "Respondent's Notice of Intent," setting forth respondent's intention not to participate further in this proceeding and to default at trial.

On April 22, 2014, the State Bar appeared for trial, but neither respondent nor her counsel of record appeared. The court conducted a brief hearing under rule 5.81(C) and received the State Bar's trial exhibits into evidence. The court entered respondent's default in an order filed on April 22, 2014. The order was properly served upon respondent's counsel by certified mail, return receipt requested. (Rule 5.81(B).) The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. Respondent has remained inactively enrolled since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 28, 2014, the State Bar filed and properly served upon respondent's counsel the petition for disbarment by certified mail.⁴ As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with respondent (or her counsel) since her default was served on April 22, 2014;⁵ (2) there are investigations pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments related to misconduct by respondent. Respondent did not respond to the petition for

⁴A courtesy copy of the disbarment petition was also served on respondent at her membership records address.

⁵ The default was both served and entered on April 22, 2014.

disbarment or move to set aside or vacate her default. The case was submitted for decision on August 25, 2014.

On November 6, 2014, this case was reassigned to the undersigned judge.

Respondent has a prior record of discipline. Pursuant to a Supreme Court order filed on December 15, 2009, respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years subject to conditions, including that she be suspended for the first 120 days of her probation period. Respondent stipulated in her prior disciplinary matter that she: (1) failed to maintain in her client trust account, the balance of client funds, which she had received and deposited into the trust account for the benefit of her clients, and (2) committed an act of gross negligence by failing to ensure that her client trust account was properly maintained, which resulted in misappropriation of client funds.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case No. 13-O-11665 – The Personal Injury Claim Matter

Count One – the court does not find respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) as there is no clear and convincing evidence that respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.⁶

⁶ Count One alleges that respondent, who was hired to represent three clients in a personal injury claim against an at-fault driver, failed to negotiate medical liens on behalf of those clients with their medical provider/lienholder.

Count Two – respondent willfully violated rule 4-100(B)(1) of the Rules of Professional Conduct (failing to promptly notify client of receipt of client funds) by delaying nine months before informing her three clients that she had received settlement checks on their behalf.

Count Three – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust account), by failing to maintain in her client trust account at least \$13,152.96 of the settlement funds that she had received for the benefit of her clients and to which they were entitled.

Count Four – respondent willfully violated section 6106 (moral turpitude) by dishonestly or with gross negligence misappropriating settlement funds in the amount of \$13,152.96, which she had received on her clients' behalf.

Count Five – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay/deliver client funds) by failing to promptly pay from the clients' settlement funds, as requested by the clients, the liens for medical expenses in their entirety.⁷

Count Six – respondent willfully violated section 6106 of the Business and Professions Code (commission of act of moral turpitude, dishonesty or corruption) by falsely representing to her clients that she had negotiated with their medical provider/lienholder and that he had agreed to reduce the clients' medical bills, when respondent knew or was grossly negligent in failing to

⁷ As noted, *ante*, upon entry of respondent's default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Thus, as alleged in Count Four between January 3 and October 25, 2011, the court finds that respondent misappropriated \$13, 152.96, which she was required to maintain in her client trust account on behalf of her three clients, Vilma Adriana Sanchez, Karla Sanchez, and Claudia Padilla (collectively, the clients). The court also finds, as alleged in Count Five, respondent made two payments, each in the amount of \$500, to the clients' medical provider/lienholder. Thus, the balance of the funds, which were misappropriated by respondent from her clients, was reduced to \$12,152.96, i.e., \$13,152.96 - \$1,000 = \$12,152.96.

know that she had not negotiated with the medical provider/lienholder and that he did not agree to reduce the clients' medical bills.

Count Seven – respondent willfully violated section 6068, subdivision (m) (failing to inform client of significant developments) by failing to inform her three clients that after receiving settlement funds on their behalf, she did not disburse any of those settlement funds to their medical provider/lienholder.

Count Eight – the court does not find respondent culpable of willfully violating section 6068, subdivision (m) (failing to promptly respond to reasonable client inquiries) as there is no clear and convincing evidence as to the subject of any of the “several” voice mail messages that the clients left for respondent and, thus, there is no clear and convincing evidence to indicate that the voicemails involved client status inquiries.

Count Nine – the court does not find respondent culpable of willfully violating rule 4-100(A) of the Rules of Professional Conduct (commingling member funds in a client trust account) as there is no clear and convincing evidence that the two checks deposited by respondent, i.e., the \$25 and the \$60 deposits, included member funds. Moreover, even if the two checks were comprised of member funds, given the low dollar amount, there is no evidence that the checks were not deposited for the purpose of “pay[ing] bank charges” as is permissible under (Rule 4-100(A)(1).

Count Ten – respondent violated section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with certain provisions of the State Bar Act and certain provisions of the Rules of Professional Conduct, in willful violation of a condition of the disciplinary probation ordered by the Supreme Court in its Order filed on December 15, 2009.⁸

⁸ Although this court finds respondent culpable of violating her probation by failing to comply with certain provisions of the State Bar Act and Rules of Professional Conduct, as set forth in Count Ten, it does not base its culpability finding in Count Ten on the allegations that

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding, as she filed a response to the NDC, was represented in court by her counsel of record on several occasions, had adequate notice of the trial date prior to entry of her default, which notice was served on her counsel, and filed a Notice of Intent in which it was stated that she did not intend to participate further in the proceeding and would default at trial;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Anita D. Rosin be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

respondent failed to competently perform legal services, failed to promptly respond to client status inquiries, and commingled personal funds in her trust account. As the court has already found in Counts One, Eight, and Nine that those allegations are not supported by clear and convincing evidence, the inclusion of those allegations in Count Ten cannot support or form the basis of the court's culpability finding in Count Ten.

Restitution

The court cannot recommend that respondent be ordered to pay restitution to Vilma Adriana Sanchez, Karla Sanchez, and Claudia Padilla, respondent's three clients in this matter, as there is no clear and convincing evidence as to how to divide and allocate the remaining \$12,152.96 balance of the misappropriated funds among the three clients.

However, the court can and does recommend that in lieu of being required to pay restitution directly to each of his clients, respondent be required to make a payment of the remaining balance of misappropriated funds, i.e., \$12,152.96, to the Client Security Fund. Each of respondent's clients can, if she so desires, make her own application for reimbursement to the Client Security Fund based on the loss of money she sustained as a result of respondent's dishonesty, i.e., respondent's misappropriation of client funds.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Anita D. Rosin, State Bar Number 198496, be involuntarily enrolled as an

inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December _____, 2014

YVETTE D. ROLAND
Judge of the State Bar Court